

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT**

vs.

**PHILLIP LAMONT RANSBURG,
APPELLANT**

DOCKET NUMBER WD78448

DATE: FEBRUARY 16, 2016

Appeal from:

The Circuit Court of Henry County, Missouri
The Honorable James K. Kelso, Judge

Appellate Judges:

Before Division Three: Joseph M. Ellis, P.J., Karen King Mitchell, J. and Gary D. Witt, J.

Attorneys:

Colette E. Neuner, for Respondent

Nancy A. McKerrow, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

PHILLIP LAMONT RANSBURG, APPELLANT

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In a case involving convictions on numerous additional counts, Phillip Ransburg appeals from his convictions on one count of second-degree assault, § 565.060, and the related count for armed criminal action, § 571.015. Those charges stemmed from Appellant charging at a man while holding a four-foot-long stick resembling a taped-up broomstick. Appellant claims the evidence was insufficient to prove beyond a reasonable doubt that he attempted to cause physical injury to the victim by means of a dangerous instrument.

REVERSED AND REMANDED.

Division Three holds:

- (1) The type of objects that may constitute “dangerous instruments” are not enumerated by statute and become “dangerous instruments” when used in a manner where the object is readily capable of causing death or serious physical injury. The key to determining whether an object is a dangerous instrument is whether the object can kill or seriously injury under the circumstances in which it was used.
- (2) The State’s evidence established that, as he charged the victim, Appellant was clenching the stick with both hands with his fists spaced about a foot and a half apart, and his fists were facing the victim as he charged. The victim testified that Appellant did not swing or jab the stick at him and that he simply charged at him “like a football player would to hit another attacker.” While certainly a four-foot-long stick can be used in a manner where it becomes a dangerous instrument, the record in this case simply does not support a finding that Appellant used or attempted to use his stick in such a manner. No evidence was presented establishing that, as utilized by Appellant, the stick was readily capable of causing death or serious physical injury if he struck the victim in that manner. Accordingly, the record is insufficient to support Appellant’s conviction for second-degree assault.

- (3) Appellant concedes that, based on the evidence and the applicable law, this Court may enter a conviction against him for the lesser-included offense of assault in the third degree. Accordingly, we enter judgment against Appellant on one count of assault in the third degree and remand the cause to the trial court for sentencing on that count.
- (4) Appellant was charged with armed criminal action for committing the felony of assault in the second degree “by, with and through, the knowing use, assistance and aid of a dangerous instrument.” Because the evidence failed to sufficiently establish that Appellant used a dangerous instrument in his assault on the victim, his conviction for armed criminal action is also not supported by the record and must be reversed.

Opinion by Joseph M. Ellis, Judge

Date: February 16, 2016

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